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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,143	02/20/2004	John D. Wilkey	2039.018800/RFE (210631US)	5387
37774	7590	10/17/2005	EXAMINER	
WILLIAMS, MORGAN & AMERSON, P.C. 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			MULLIS, JEFFREY C	
			ART UNIT	PAPER NUMBER
			1711	
DATE MAILED: 10/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/784,143

Applicant(s)

WILKEY ET AL.

Examiner

Jeffrey C. Mullis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-26 and 28-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-16,23-26 and 28-41 is/are rejected.
- 7) ☒ Claim(s) 17-22 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-16, 23-26 and 28-41 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Swisher et al., (US 2003/0004267).

Swisher et al. disclose a composition containing a tapered conjugated diene-mono vinylarene block copolymer and at least one styrenic polymer. Note the Abstract. Note the Examples starting in paragraph 117 where styrene and mixed charges of styrene and butadiene are polymerized sequentially in the presence of a randomizer, THF, a process similar to that used by applicants' specification and furthermore given that substantial amounts of butadiene are used along with styrene in the tapered blocks would reasonably appear that applicants' block characteristic would be inherent. Molecular weights for block copolymers A1 and A2 described in paragraphs 120-122 can be calculated (number average) for the terminal styrenic blocks as being far below the 60,000 molecular weight recited by the independent claims assuming that one molecule of alkyl lithium initiator polymerizes a single chain of block copolymer which is generally known in the art for polymerization of styrene/diene copolymers using alkyl lithium initiation. Note the footnote to Table 1 where it is disclosed that styrene-methyl methacrylate copolymer is added to the block copolymer compositions. Note the footnote to Table 2 where it is disclosed that blends are further blended with KRO3, a styrene-butadiene block copolymer which is a commercial product of Chevron Phillips

Chemical Co. Note paragraph 101 disclosing addition of C1-C24 alkyl acrylates comonomer for producing styrenic copolymers.

With regard to the limitation of specific amounts of butyl acrylate units present in the component "ii" of applicants as set out in claims 11, 12 and 14 by the presence of other methacrylate units in specific amounts and with regard to the production of a film from the claimed composition or a packaging article, patentees at paragraphs 98-101 specifically disclose copolymerization of styrene with monomers such as butyl acrylate and in paragraph 98 specifically discloses that the acrylate comonomers are present in a minor amount, i.e. less than 50%. Although no examples exist of compositions having applicants specific styrene/acrylate copolymer choice of such from the patent would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results absent any showing of surprising or unexpected results. Note paragraph 3 of the published application where it is disclosed that compositions may be used to produce packaging such as blister packaging (i.e. a packaging containing an air filled film). Therefore conversion of the composition of Swisher et al. into films or packaging use of applicants' specific monomers in their amounts would have been obvious to a practitioner having ordinary skill in the art at the time of the invention in the expectation of adequate results absent any showing of surprising or unexpected results.

U.S. Patent 5,628,950, cited of interest discloses that KRO3 is a styrene-butadiene copolymer containing 75% styrene and 25% butadiene.

It is noted that the reference relied upon discloses some of assignee's tradenamed materials. If applicants are aware of any publicly available information regarding what these materials are, they are requested to submit them since such information would appear to be relevant to patentability.

Applicant's arguments filed 8-5-05 have been fully considered but they are not persuasive. Patentees molecular weights are calculated to be substantially below 60,000 based on one alkyl lithium polymerizing one chain (a common assumption in the art) and as such only grossly inappropriate technique with gross amounts of impurities would result in block molecular weights of greater than 60,000. References are interpreted as those skilled in the art would interpret them and those skilled in the art would not assume use of inappropriate laboratory technique. Furthermore patentees specifically disclose "anhydrous" conditions and use of nitrogen atmosphere such as would minimize destruction of the alkyl lithium initiator. With re to applicants' specific acrylate comonomer, patentees disclose C1-C24 acrylates at paragraph 98.

Applicants search report has been reviewed but it is the position of the examiner that the best art is relied upon above. Swisher does not teach or suggest the three component blend having applicants specific component rubber component "iii" of claim 42.

Claims 17-22 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Mullis whose telephone number is (571) 272-1075. The examiner can normally be reached on Monday-Friday from 9:30 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (571) 272-1078. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-0994.

J. Mullis:cdc

October 7, 2005

J. MULLIS  
PRIMARY EXAMINER  
GROUP 1200

JEFFREY C. MULLIS  
PRIMARY EXAMINER  
GROUP 1200

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